IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

L.P.A. No. 280 of 1999

1. THE SOCIETY OF ST.HELENA'S
SCHOOL & JR.COLLEGE
Near G.P.O., Pune 411 001
(through its Chairman)

2. The Principal, St. Helena's
School and Junior College,
Near G.P.O., Pune 411 001 .... Appellants.

V/S

1. SMT. SANDHYA S. KAMBLE
age about 37 years, occ: Service,
residing at Akka Saheb Maharaja
Compound, 36 Sassoon Road,
Pune 411 001.
2. The Education Inspector (SZ)
and Inspector of Anglo Indian
Schools, Office of Deputy Director
of Education, Topiwala Lane,
New Secondary School Building,
Opp. Bhatkhamkar Police Station,
Grant Road (East), Mumbai.
3. The Chief Executive Secretary,
Indian Schools Certificate
Examination Board, 3rd floor,
Pragati House, Nehru Place,
New Delhi. .. Respondents

Mr. Shashi Jain with Naina Desai and Udayan Jain advocates for appellant.
Respondent Smt. Sandhya S. Kamble, present in person.

CORAM: R.M.S. KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.
DATE:25/04/2006

ORAL JUDGMENT (Per R.M.S. KHANDEPARKAR J.)

1. By consent, consequent to the order passed in Civil Application No. 92 of 2006 the LPA is taken up for hearing and accordingly the learned advocate for the appellant and the respondents in person were heard at length.

2. By the present appeal the appellant is challenging the order dated 14th July 1999 passed in writ petition no.3857 of 1999. By the impugned order the writ petition filed by the appellant against the order of the School Tribunal dated 10th March 1999 in Appeal No. 33 of 1997 has been rejected. By the said order of the Tribunal, the appeal filed by the respondent against the order of termination of her services passed by the appellant on 18th April 1997 was allowed and the said order of termination was set aside and the respondent no. 1 was directed to be reinstated as an Assistant Teacher with effect from 18.4.1997 with full back-wages.

3. The undisputed facts in the matter are that the respondent no.1 was appointed on probation, after having gone through the regular course of selection of candidates as the Assistant Teacher with effect from 26th April 1995 in the school run by the appellant Society, situated at Pune, being St. Halena's School and Junior College, Pune. By order dated 18.4.1997 by the letter issued by the respondent no.2 the services of the respondent no.1 were sought to be terminated. The same was challenged by the respondent no.1 by filing appeal before the School Tribunal and the School Tribunal by order dated 10th March 1999 was pleased to set aside the order of termination of services of the respondent no.1. Perusal of the order of the School Tribunal discloses that the respondent no.1 was on probation for a period of 2 years, her services were terminated without the management forming any opinion, as regards unsatisfactory performance of the respondent no.1, in rendering the services as the Assistant Teacher in the said educational institution and therefore the termination of the services was held to be illegal and bad in law.

4. The learned Single Judge while rejecting the petition filed by

the appellant, while confirming the said finding has also observed that undisputedly the notice of termination did not disclose that one month' ssalary had been paid to the respondent no.1. The law on the point that the services of an employee on probation can be terminated during the probationary period in case his / her performances is found unsatisfactory is well settled. However, it is also well settled that it is for the management to form the opinion about the unsatisfactory performance by such employee. It was for the management to establish that it had formed the opinion regarding unsatisfactory performance in services rendered by the respondent no.1. The respondent no.1 had specifically raised the said issue in the appeal filed before the Tribunal. In the circumstances, no fault can be found with the finding arrived at by the School Tribunal and duly confirmed by the learned Single Judge.

5. Apart from the discussion in the order passed by the Tribunal, the memo of appeal filed by respondent no.1 before the Tribunal specifically disclosed a ground to the effect that the termination was arbitrary and was issued due to some

misunderstanding of the principal of the school. Further that during the period of her services no memo or warning letter was ever issued to the respondent no.1. It evidently discloses that there was no occasion for the management to form any opinion about alleged unsatisfactory performance by the respondent no.1, and need for termination of services on that ground. Besides, the finding on this aspect of the matter is not a pure question of law and has been passed on proper appreciation of the materials on record and therefore no fault can be found with the confirmation of the said finding by the learned Single Judge, which is also based on analysis of the materials on record.

6. It is also well settled law that though the services of the employee on probation can be terminated, it is necessary that the termination order should be preceded by a notice of one month in advance or be accompanied by salary for one month, in lieu of the notice period. The letter dated 18th April 1997 which was issued to the respondent no.1 admittedly discloses that the management had neither issued one month' snotice in advance nor had tendered one month' s

salary along with the said order of termination. In fact the said order of termination reads thus:

> "Your services have been terminated with effect from 18/4/97. As per rules, you will be paid your salary for the months of April and May 1997."

The said letter was issued on 18th April 1997 by the Principal of the school. Obviously there is nothing to disclose that one month' salary was either offered along with the said letter of termination or that it was paid along with the said letter. Therefore, as rightly observed by the learned Single Judge in the absence of any evidence in that regard the termination cannot be held to be legal. Apparently therefore, the termination of the respondent no.1 being illegal, the School Tribunal was justified in directing her reinstatement in the services and the learned Single Judge in refusing to interfere with the said direction.

6. As regards the direction for payment of back-wages for the period 18th April 1997, however, the School Tribunal was not justified in ordering the back-wages for the entire period. Undisputedly , it was not the case of the respondent no.1 that

from 18th April 1997 till disposal of the appeal by the School Tribunal, she was totally unemployed though the said claim was made by the respondent no.1 in the course of the hearing of the matter before us. In our considered opinion therefore, the Tribunal was not justified in directing the payment of back-wages from 18th April 1997 till the date of the passing of the order of the Tribunal, ofcourse, the respondent no.1 would be entitled for back-wages consequent to the order of the Tribunal directing her reinstatement with effect from April 1999 onwards, i.e. the date the order for reinstatement was passed and yet the order was not complied with.

7. It was sought to be contended on behalf of the appellant that the respondent would not be entitled for any such back-wages in view of stay granted by this court during the course of the writ petition and as well as during the pendency of the LPA. Merely because at the time of issuance of the notice in the matter, the stay was granted, that does not mean that she shall not be entitled for back – wages even after this court finds that there is no substance in the contention that the termination of the services of the respondent no.1 was legal

and lawful. Thus it can be seen that the termination of services was bad in law and there was a direction by the Tribunal for reinstatement and no salary for the period from April 1999 onwards has been paid to the respondent no.1.

8. Apart from clarifying the above aspect in relation to the order of the School Tribunal there is no interference called for in the impugned order and hence the appeal, as far as the challenge to the order of the Tribunal directing reinstatement of the respondent no.1 in the employment of the appellant is concerned, the same is liable to be dismissed.

9. In the result, therefore , the appeal is partly allowed to the extent that the liability of the appellant for the payment of back – wages shall be from April 1999 onwards and not prior to that. The appeal as far as it challenges the order of the Tribunal directing reinstatement of the respondent no.1 in the employment of the appellant is concerned the same is hereby dismissed. There shall be no order as to costs.

10. At this stage the learned advocate for the appellant prays for stay of the order passed today for 12 weeks, which is objected to by respondent no.1.

11. In the facts and circumstances of the case we are inclined to grant partial stay in relation to the payment of arrears from April 1999 till April 2006. However, we are not inclined to stay the order in so far as it relates to the order directing reinstatement of the respondent no.1 in the employment of the appellant.

(MRS. ROSHAN DALVI J.) **(R.M.S.KHANDEPARKAR J)**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No. 36 of 2006
in
L.P.A. No. 280 of 1999

THE SOCIETY OF ST.HELENA'S
SCHOOL & JR.COLLEGE & ANR. ... Applicants.

V/S
SMT. SANDHYA S. KAMBLE AND ORS. .. respondents

Mr. Shashi Jain with Naina Desai and Udayan Jain for appellant
Respondent Smt. Sandhya S. Kamble, present in person.

CORAM: R.M.S. KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.
DATE:25/04/2006

P.C.:

In view of the disposal of LPA No. 280 of 1999 this application does not survive. Hence dismissed. .

The application is disposed of.

(MRS. ROSHAN DALVI J.) (R.M.S.KHANDEPARKAR J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No. 7678 of 1999
in
L.P.A. No. 280 of 1999

THE SOCIETY OF ST.HELENA'S
SCHOOL & JR.COLLEGE & ANR. ... Applicants.

V/S
SMT. SANDHYA S. KAMBLE AND ORS. .. respondents

Mr. Shashi Jain with Naina Desai and Udayan Jain for appellant
Respondent Smt. Sandhya S. Kamble, present in person.

CORAM: R.M.S. KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.
DATE:25/04/2006

P.C.:

In view of the disposal of LPA No. 280 of 1999 this application does not survive. Hence dismissed. .

The application is disposed of.

(MRS. ROSHAN DALVI J.) (R.M.S.KHANDEPARKAR J)